IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 5651 of 2001 (S/S)
(Old No. 26635/1992)

Ghan Shyam Tripathi,
S/o Mr. M.D. Tripathi,
Lecturer, Botany, DAV College,
Dehradun. …… Petitioner

Versus

The Chancellor,
H.N.B. Garhwal University,
Srinagar, Garhwal & others ……. Respondents

Hon. P.C.Verma, A.C.J.
Hon. Rajesh Tandon, J.

Heard learned counsel for the parties.

By the present writ petition, the petitioner has prayed for a writ of certiorari to quash the order dated 9th June, 1992 passed by the Chancellor, HNB Garhwal University, Srinagar, Garhwal as well as for a writ of mandamus directing the respondent to treat the petitioner in service and pay him salary.

Brief facts giving rise to the present writ petition are that according to the petitioner, he was appointed as Lecturer in Botany Department in D.A.V. (P.G.) College on 31 October, 1974. The Principal of the College wrote a letter to the Vice-Chancellor on 1st August, 1978 for approval of the petitioner. Thereafter, from time to time several letters were written to the Registrar and Vice-Chancellor for the approval of the petitioner. Thereafter, on 7th March, 1979 the Principal wrote a letter to the Registrar for the approval of the petitioner. Thereafter, from time to time several letters and representations dated 26.10.1981, 20.11.1982, 5.2.1984, 8.8.1984, 12.10.1984, 25.1.1985, 10.4.1985 and 10.7.1985 were sent to the University. According to the petitioner, he represented to the Vice Chancellor on 26.8.1987. The petitioner has submitted that one R.K. Jain who was appointed lecturer in Botany in DAV College Dehradun illegally made a representation before the Hon'ble Chancellor against the seniority of petitioner on the ground that he was senior to the petitioner.

Earlier also the petitioner has filed a writ petition before the Allahabad High Court and the writ petition was heard by a Bench consisting of Hon'ble Acting Chief Justice K.C. Agrawal and Hon'ble Justice R.K. Gulati and the order was passed to the following effect:

> "So far as the question of disapproval in 1982 is concerned, the petitioner's argument was that he did not appear at the selection and the copy of the letter which has been filed as Annexure 4 to the counter affidavit dated 27.3.1982 had never been sent to him. This is also not believable. The University authorities were not inimical to the petitioner and they could not be imagined to have manufactured the document to defeat the right of the petitioner. Rakesh Kumar Jain did appear at the selection and as stated in the counter affidavit, he has been teaching as Teacher in Botany. All these things could not be fabricated and manufactured in order to defeat the claim of the petitioner. As stated above, the University has no interest in no acceding to the just and right claim of the petitioner. Consequently, what appears to us is that the petitioner has filed the instant writ petition with false and wrong allegations and on a scrutiny of the points before us, we find no merit in the instant writ petition.
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> Sri L.P. Naithani, learned counsel appearing for the respondent University is right in pointing out that the judgment dated 18.8.1987 passed by this Court in the earlier writ petition filed by the petitioner, without any notice to the respondent, having been passed without hearing the University, it could not be made basis for assumption that the approval must be accorded to the petitioner because he had been working as a Teacher. This fact had been assumed by the Court and the Vice Chancellor had no occasion to rebut the same."

The controversy, therefore, had already been decided by the Division Bench and the writ petition was rejected. The impugned order has been passed by the Chancellor where it has been observed that Dr. R.K. Jain has been duly appointed whereas the appointment of the petitioner was never made after 30th June, 1976. The

Chancellor has recorded a finding according to section 31 of the UP Universities Act which reads as under:

> "a. No teacher recommended by the Selection Committee shall be appointed by the Management of an affiliated or associated college other than a college maintained exclusively by the State Government unless prior approval of the Vice-Chancellor has been obtained.
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> b. The Management shall, as soon as possible, after the meeting of the Selection committee, submit the recommendations of the Committee, along with other relevant documents to the Vice-Chancellor for approval.
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> c. The Vice-Chancellor, if he is satisfied that the candidate recommended by the Selection Committee does not possess the minimum qualifications or experience prescribed, or that the procedure laid down in the Act for the selection of the teacher has not been followed, shall convey to the Management his disapproval.
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> Provided that if the Vice-Chancellor does not convey his disapproval within a period of one month from the date of receipt of the documents referred to in clause (b), or does not send to the Management any intimation in connection therewith, he shall be deemed to have approved of the proposal."

The Chancellor having recorded a finding that the appointment of the petitioner was never approved and was not in accordance with section 31 of the said Universities Act, no interference is required.

In view of the above facts and circumstances, we find no infirmity in the order dated 9th June, 1992 passed by the Chancellor, HNB Garhwal University, Srinagar, Garhwal. Therefore, writ petition is dismissed.

(Rajesh Tandon, J.) **(P.C.Verma, A.C.J.)**

10.03.2004.
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